

AMENDED IN ASSEMBLY JUNE 14, 2006

AMENDED IN ASSEMBLY JUNE 15, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 148

Introduced by Senator Scott

(Principal coauthor: Senator Florez)

(Principal coauthor: Assembly Member Liu)

*(Coauthors: Assembly Members Bass, Liu, and Oropeza Bass,
Frommer, Hancock, Jones, Oropeza, and Umberg)*

February 7, 2005

An act to amend Section 23790 of, *and to add Section 23790.3 to*, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 148, as amended, Scott. ~~Alcoholic beverages: licensing restrictions.~~ *Alcoholic beverages: licensing restrictions: local ordinances.*

~~The~~

(1) The Alcoholic Beverage Control Act prohibits the issuance of retail license to sell alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Existing law provides that premises which had been used in the exercise of the rights and privileges of a retail license to

sell alcoholic beverages at a time prior to the effective date of the zoning ordinance may continue operation under specified conditions.

This bill would provide that a city or county may impose conditions, by a validly enacted city or county zoning ordinance, on any premises issued an off-sale retail license where the city or county holds a administrative hearing with regard to placing conditions on the premises and the city or county gives specified persons notice of that hearing.

(2) The Alcoholic Beverage Control Act imposes upon the Department of Alcoholic Beverage Control the responsibility to administer and enforce state laws with respect to alcoholic beverages, including the implementation of alcoholic beverage licensing. Among other things, the act prohibits the issuance of any retail license for the sale of alcoholic beverages for any premises that are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. The act provides that premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under specified conditions.

This bill would, in the case of premises issued a Type 20 or Type 21 off-sale retail license, authorize a county or city to provide for a reasonable amortization period and termination or imposition of conditions on legal nonconforming uses pursuant to a validly enacted zoning ordinance. These provisions would also apply to premises which had been used in the exercise of rights and privileges conferred by the retail license at a time prior to the effective date of the zoning ordinance, as provided. These provisions would become inoperative on January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23790 of the Business and Professions
- 2 Code is amended to read:
- 3 23790. (a) No retail license shall be issued for any premises
- 4 which are located in any territory where the exercise of the rights
- 5 and privileges conferred by the license is contrary to a valid
- 6 zoning ordinance of any county or city.

1 (b) Premises which had been used in the exercise of those
2 rights and privileges at a time prior to the effective date of the
3 zoning ordinance may continue operation under the following
4 conditions:

5 (1) The premises retain the same type of retail liquor license
6 within a license classification.

7 (2) The licensed premises are operated continuously without
8 substantial change in mode or character of operation.

9 (c) For purposes of this subdivision, a break in continuous
10 operation does not include:

11 (1) A closure for not more than 30 days for purposes of repair,
12 if that repair does not change the nature of the licensed premises
13 and does not increase the square footage of the business used for
14 the sale of alcoholic beverages.

15 (2) The closure for restoration of premises rendered totally or
16 partially inaccessible by an act of God or a toxic accident, if the
17 restoration does not increase the square footage of the business
18 used for the sale of alcoholic beverages.

19 (d) (1) Notwithstanding subdivision (b), with respect to any
20 premises issued a Type 20 or Type 21 off-sale retail license, a
21 city or county may provide for a reasonable amortization period
22 and termination or imposition of conditions on legal
23 nonconforming uses pursuant to a validly enacted zoning
24 ordinance.

25 (2) Notwithstanding paragraph (1), any premises issued a
26 Type 20 or Type 21 off-sale retail license prior to the effective
27 date of the act adding this subdivision shall have up to six
28 months to conform to the conditions imposed by an ordinance
29 described in paragraph (1).

30 (3) Notwithstanding any other provision of this subdivision to
31 the contrary, nothing in this section shall preclude a city, county,
32 or city and county from entering into a negotiated agreement for
33 a longer amortization period than specified in an ordinance
34 described in paragraph (1) with a premises issued a Type 20 or
35 Type 21 off-sale retail license.

36 (4) Nothing in this section shall be interpreted to require the
37 department to impose conditions upon Type 20 and Type 21
38 licenseholders.

39 (5) This subdivision shall cease to be operative on January 1,
40 2010.

1 *SEC. 2. Section 23790.3 is added to the Business and*
2 *Professions Code, to read:*
3 *23790.3. Notwithstanding Section 23790, a city or county*
4 *may impose conditions, by a validly enacted city or county*
5 *zoning ordinance, on any premises issued an off-sale retail*
6 *license where the city or county holds a public administrative*
7 *hearing with regard to placing conditions upon the existing use*
8 *of those premises and the city or county gives notice to the owner*
9 *of record or lessee of the real property affected, and to the*
10 *off-sale retail licensee if different than the owner of record or*
11 *lessee of the real property, of the public administrative hearing*
12 *with regard placing conditions upon the existing use of those*
13 *premises.*